

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12655 of 2023

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Anil Mihir and Associates through its Partner CA, Amit Bhattacharya (Male aged about 45 years) son of Late Ajit Bhattacharya having office at Back side Yes Bank, Ground Floor, Rajendra Ram Plaza, Exhibition Road Patna 800001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary Rural Development Department Bihar Patna office at Main Secretariat Punaichak Patna 800001.
2. Secretary, Rural Development Department Bihar, Patna office at Main Secretariat Punaichak Patna 800015.
3. Joint Secretary, Rural Development Department Bihar Patna office at Main Secretariat Punaichak Patna 800015.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Diwakar Prasad Singh, Advocate

For the Respondent/s : Mr. Vinay Kirti Singh, GA 2

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

4 08-11-2023 In the instant petition, the petitioner has prayed for the following reliefs:-

“1. That in this writ petition challenge is made to biased approach & discrimination in selection process & further the petitioner challenges Tailored & Targeted Conditions inserted in Notice for Empanelment of Chartered Accountant Firms for appointment as Statutory Audit of Rural Development & allied Government Schemes of Rural Development Department Bihar across all its implementing/



administrative Units published by Rural Development Department (Annexure-1) published under the Signature of Respondent No.3 in which Pre-evaluation & final evaluation Criteria of empanelment of Chartered Accountant Firms (CA Firm in short) was published openly on website <https://state.bihar.gov.in/rdd/> (Tender Section) & the interested Firm was directed to submit their Proposal completed in all respect along with some enclosures was directed to be produced at the stipulated address by 3 PM on 24th March 2023. In which some conditions which is otherwise does not touches merit of the Firm was Tailored with sole purpose to oust some eligible CA Firms who has office in various Parts of the Country including in Bihar & having its office at Patna as such some clauses published in Main advertisement was amended with new criteria & above all naked partisan was made in selection of CA Firms which will be demonstrated in Paragraph below in as much as the Firms who were ineligible due to non submission of necessary documents but has official/political support was treated as blue eye baby & those Firms were allowed to supplement their Papers but other Firms who had no support base was not given same liberty to produce such documents & declared disqualified. Moreover entire selection process appears Fixed & appears to have conducted window dressing exercise & selection was made on the basis of Pick & chooses Basis in order to advance benefit to fixed blue eye Firm. Moreover some tailored criteria were fixed which do not commensurate with the Terms-VI "Situation/Location of offices of audit



Firm". As such there is naked partisan on the basis of political & official support & the same was only criteria to select the Proposal of blue of eye babies & the case of the petitioner having much more qualification & experience was declared disqualified as such the petitioner prays for issuance of appropriate writ order or direction of writ in the nature of mandamus commanding the respondents for following relief recorded in Paragraph below:"

(i) That for issuance of appropriate writ order or direction or writ in the nature of Certiorari quashing the List of Selected Firm selected on the basis of Pick & Choose & seer discrimination naked partisan & large number bungling, since selection was made on the basis of pick & choose, as such prays for quashing of Final list of Qualified CA Firms published on Department website (Annexure-).

(ii) That IN-ALTERNATIVELY the petitioner prays for issuance of appropriate writ order or direction or writ in the nature of Mandamus Commanding the respondents to remove the Tailored Criteria which is otherwise does not commensurate with the **Text-VI "Situation/Location of offices of Audit Firm"** so far it relates with Bank account:

"Have Bank Accounts of the Firm in Bihar, such Branch must submit Bank Statement of 12 Months of the Bank accounts of the Firm in Bihar" Unquote

The petitioner fulfilling Criteria regarding the Branch office in Bihar as per clause VI(b). Office is continuously functioning since more than 5 years, (as per ICAI Records), Branch of the petitioner is



registered under GST Laws in Bihar; more than 3 year old from the publication of RFP & TOR but do not have Bank Accounts in Bihar since only Registered Account is for the purpose of Accounting & Income Tax payment & the Branch Manager from the Bank at Odisha has Certified that in writing that the Bank Account No. 73800400000090 is being operated from Bihar also as such a declaration be issued that the disqualification on the ground of Bank Account in Bihar is highly illegal & arbitrary exercise of power.

*(iii) That direction be given to the respondent to remove such erroneous & Tailored condition from Notice for empanelment of Chartered Accountant Firms since other relevant/important criteria described in Criteria No.VI is being fulfilled by the petitioner concerning clause VI(b). Office is continuously functioning since more than 5 years, (as per ICAI Records), Branch of the petitioner is registered under GST Laws in Bihar; more than 3 year old, from the publication of RFP & TOR, as such a declaration by way of mandamus be issued commanding the respondent that the Bank account in Bank cannot commensurate with **Text-VI "Situation/Location of offices of Audit Firm"** as such the same cannot be disqualification for CA Firms particularly (1) who have Branch office since more than five years as per ICAI Records,, (2) Branch is registered under GST Laws in Bihar since more than 3 years, as such a declaration be issued commanding the respondents that the having a Bank Account in Bihar cannot be a mandatory criteria for the **Text-VI** for appointment of CA for statutory audit of Rural Development department which*



seriously jeopardize the fundamental rights of its Firms in Bihar to be selected as such direction may kindly be given alternatively to publish fresh Tender removing erroneous & Tailored conditions as deliberately recorded.

(iv) That for grant of any other relief or reliefs to which the petitioner is found entitled in law be granted to them.

2. On 13. 10.2023, the following order was passed.

“1st Respondent-the Secretary, Rural Development Department Bihar, Patna is directed to examine whether the petitioner could be accommodated as one of the Chartered Accountant firm for Empanelment of Chartered Accountant Firms for appointment as Statutory Audit of Rural Development & allied Government Schemes of Rural Development Department Bihar across all its implementing/ administrative Units, for the reasons that, the petitioner has been disqualified with reference to one of the criteria of Pre-evaluation of Empanelment of Chartered Accountant Firms (CA Firm). The petitioner has been disqualified only on the count that petitioner did not have the bank account in the State of Bihar. There is no logic behind imposing such condition that such of those Chartered Accountants/firms must have a Bank Account in the State of Bihar and he or the firm must furnish bank statement of 12 months of the Bank-Account of the firms in Bihar and a copy of the G.S.T. Returns of 12 months as on particular date read with the fact that empanelment of Chartered Accountant Firm is for a period of three years. It is to



be noted that competent Chartered Accountant/Firm cannot be disabled, merely on the ground that he/firm did not have a Bank Account of the firm in the State of Bihar. In other words, we are of the view that such aforementioned clause has no rationale for imposing such condition and so also what objective is being sought to be achieved. Therefore, consideration of the petitioner's case for empanelment should be with a view that having a Bank Account of the Firm in the State of Bihar is not mandatory. The same shall be taken note of by 1st Respondent-the Secretary, Rural Development Department Bihar, Patna and it will proceed to pass order for empanelment of the petitioner. Still if the 1st Respondent is of the view that the aforementioned clause is a mandatory requirement, in that event, we have no other option except to proceed on the merits of the case on the next date of hearing.

2. Re-list this matter on 08.11.2023

3. Copy of this order shall be made available to the State Counsel.

3. Today, leaned counsel for the respondents filed supplementary counter affidavit on behalf of respondent nos. 1 to 3 along with enclosures Annexure-3 to 6.

4. Perusal of the supplementary counter affidavit and documents, it is evident that grievance of the petitioner has been redressed, therefore, the present petition do not survives for consideration.



5. Accordingly, the present petition stands disposed of
as it has become infructuous.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

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